Appeal dismissed with No 20 Bevans v. U. States

Mar. 19 Rec'd Nelson

Mar. 26. Read opinion & Rest stored for consideration.

Postponed & ordered for re-argument 1st Tuesday next Term.

TRANSCRIPT OF RECORD.

1871 Nov 23. Received Thing - Brief. Brief & Appl.

SUPREME COURT OF THE UNITED STATES.

25 Wall 4440
1 Dill Bath. 465

No. ~~528~~ 1295

JOHN G. HALLIBURTON, SILAS F. FIELD, RICHARD H. JOHNSON, JOHN J. McALMONT, SAMUEL F. DOLLEY, AND ANDREW J. HUTT, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED DECEMBER 4, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 323.

JOHN G. HALLIBURTON, SILAS F. FIELD, RICHARD H. JOHNSON, JOHN J. McALMONT, SAMUEL F. DOLLEY, AND ANDREW J. HUTT, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the Circuit Court of the United States for the eastern district of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between the United States, plaintiff, and John G. Halliburton, Silas F. Feild, Richard H. Johnson, John J. McAlmont, Samuel F. Dolley, and Andrew J. Hutt are defendants, a manifest error hath happened, to the great damage of the said defendants, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 5th day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL.] CHAS. P. REDMOND,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

HENRY C. CALDWELL,
Dist. Judge.

2 The execution of the foregoing writ of error appears by the schedule hereto annexed.

CHAS. P. REDMOND, *Clerk.*

October 16, 1868.

Endorsed: 327. John G. Halliburton et al. v. United States. Writ of error. Filed May 5, 1868. Chas. P. Redmond, clerk.

3 Be it remembered that on the ninth day of February, A. D. 1867, came into the clerk's office of the District Court of the United States for the eastern district of Arkansas, Sol. F. Clark, esq., district attorney, and on behalf of the United States filed his declaration, which is in the words and figures following, to wit:

In the District Court of the United States for the eastern district of Arkansas, at the April term, A. D. 1867.

The United States of America, plaintiff in this suit, by Solomon F. Clark, her attorney, complains against John G. Halliburton, Richard H. Johnson, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley and John J. McAlmont, defendants herein, of a plea of debt, and that render unto the said plaintiff the sum of twenty thousand dollars which they justly owe to and unjustly detain from the said plaintiff, for that whereas the said defendants heretofore, to wit, on the 26th day of July, A. D. 1859, at said eastern district of Arkansas, by their certain writing obligatory of that date, sealed
4 with their seals, and now here to the court shown, acknowledged themselves to be held and firmly bound to the plaintiff, together with one James B. Johnson, who is now deceased, in the penal sum of twenty thousand dollars above demanded to be paid to the said plaintiff, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, that is to say, that "whereas the President of the United States had, pursuant to law, appointed the said John G. Halliburton to be marshal of the United States for the eastern district of Arkansas, to have and to hold the same with all the rights, privileges and emoluments thereunto lawfully appertaining for four years, from the 26th day of July, 1859, unless sooner removed therefrom, as by a commission to him bearing date the first day of July, A. D. 1859, more fully appeared," it was and is provided that if the said John G. Halliburton, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal then the said
5 obligation shall be void, otherwise to remain in full force and virtue.

And the said plaintiff, according to the form of the statute in such cases made and provided, in fact say, that after the making of said writing obligatory, to wit, on the first day of April, A. D. 1861, at said district, the said John G. Halliburton was indebted to the United States in the sum of three thousand nine hundred and forty-six dollars and sixty-five cents, for so much money before that time had and received as such marshal for the use of the said plaintiff, and in the further sum of three thousand nine hundred and forty-six dollars and sixty-five cents, for so much money then and there found due to the said plaintiff by the said John G. Halliburton, as such marshal, upon an account then and there stated between them, of and concerning matters of account which had accrued between the said plaintiff and the said Halliburton, as such marshal, after the execution of the said writing obligatory; and being so indebted, the said John G. Halliburton undertook and promised to pay the
6 said several sums of money to the said plaintiff when thereto afterwards requested; yet the said Halliburton, though often requested, has not paid the said sums of money, or either of them, or any part of either, whereby the said plaintiff says she is damaged to the amount of five thousand dollars.

And the said plaintiff, by way of assigning a second and further breach of the said writing obligatory, according to the form of the statute in such cases made and provided, in fact says, that after the making of the said writing obligatory, to wit, on the first day of April, A. D. 1861, at said district, there was in the hands and custody of the said Halliburton, as such marshal, and which had accrued to him, and came to his hands after the making of said writing obligatory, and secured thereby a further large sum of money, to wit, the sum of three thousand nine hundred and forty-six dollars and sixty-five cents, belonging to the said plaintiff, the same being a balance in his hands and possession after deducting all credits due him from the plaintiff as to which he was in any way entitled,
7 and which balance of money it became and was the duty of said Halliburton, as such marshal, to pay over to the said plaintiff; yet he hath not paid over the same to the said plaintiff, nor any part of it, but afterwards, to wit, on the day and year aforesaid, at the district aforesaid, he, the said Halliburton, converted the said sum of money to his own use, whereby the said plaintiff says she has suffered damage to the amount of five thousand dollars.

By reason of which said breaches the said bond or writing obligatory hath become forfeited and an action hath accrued to the said plaintiff to have and recover of and from the said defendants the said sum of twenty thousand dollars above demanded, the penalty of said writing obligatory, yet the said defendants have not as yet nor has either of them paid the said sum of money, or any part thereof, but to pay the same have hitherto wholly failed and refused and still do fail and refuse, to the damage of the said plaintiff of two thousand dollars, and therefore she sues.

SOL. F. CLARK,
U. S. Dis't Att'y, East Dist. Ark.

Filed and writ issued, Feb'y 9, 1867.
CHAS. P. REDMOND, *Clerk.*

8 And thereupon on the same day the clerk of said court issued thereon a writ of summons, which is in the words and figures following, to wit:

9 UNITED STATES OF AMERICA.
Eastern District of Arkansas:

The President of the United States to the marshal of the eastern district of Arkansas, greeting:

You are hereby commanded to summon John G. Halliburton, Richard H. Johnson, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley, and John J. McAlmont, defendants herein, if they be found within your district, to appear before the judge of our District Court of the United States, in and for the eastern district of Arkansas, at the United States court-room, in the city of Little Rock, on the first day of our next April term, 1867, to answer the United States of America of a plea of debt, and that they render unto said plaintiff the sum of

twenty thousand dollars which they justly owe to and unjustly detain from the said plaintiff, to the damage of plaintiff two thousand dollars, ($2,000,) and have you then and there this writ with the manner of your execution hereof indorsed hereon.

In testimony whereof Hon. Henry C. Caldwell, district judge of the United States for said district, has caused the seal of said District Court to be hereunto affixed this 9th day of February, A. D. 1867, and in the ninety-first year of our independence.

[L. S.] Attest: CHAS. P. REDMOND,
Clerk.

10 Which writ is endorsed as follows: No. 61. U. S. District Court, eastern district of Arkansas. United States vs. John G. Halliburton, R. H. Johnson, et als. Summons. Issued February 9, 1867. Returnable April 1, 1867. Damages, 2,000 00. Debt 20,000 00. Returned and filed March 12, 1867. Chas. P. Redmond, clerk. Sol. F. Clark, U. S. attorney.

11 On which writ the marshal makes return as follows, to wit:

In obedience to the within writ I have summoned the within named John G. Halliburton, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolly, and John J. McAlmont, by reading the same to them in their presence and hearing at , in the eastern district of Arkansas, on this 9th day of February, A. D. 1867, and Richard H. Johnson, by leaving a true copy of the same with Mrs Annah A. Johnson, his wife, at their residence, March 12th 1867.

ISAAC C. MILLS,
U. S. Marshal for Eastern District of Arkansas,
By R. H. M. MILLS, *Deputy.*

12

13 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a District Court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the first day of April, anno Domini one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 6th, A. D. 1867, it being yet a day of the April term, 1867, the following further proceedings were had, to wit

UNITED STATES
vs.
JOHN G. HALLIBURTON, Richard H. Johnson, *et al.* } Debt.

And now come the said defendants by Watkins & Rose, their attorneys, and file herein their prayer of oyer of the writing obligatory sued on herein.

Which prayer of oyer is in the words and figures following, to wit:

14 In U. S. District Court, eastern dis't of Ark., April term, A. D. 1867.

UNITED STATES, pl'ffs,
vs.
JOHN G. HALLIBURTON *et als.*, def'ts. } Debt.

Comes said defendant, John G. Halliburton, by attorney, and craves oyer of the writing obligatory and condition thereof in said declaration mentioned, &c.

WATKINS & ROSE, *Att'y.*

Filed April 6th, 1867.

CHAS. P. REDMOND, *Clerk.*

And on April 12th, A. D. 1867, it being yet a day of the April term, 1867, the following further proceedings were had, to wit:

15 UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. Johnson, et als. } Debt.

And now comes the said defendant, Halliburton, by Watkins & Rose, his attorneys, and files herein his pleas of payment and set off, and this cause is continued, which pleas are in the words and figures following, to wit:

In U. S. Ct. Ct. east. dist. Arks , at April T., 1867.

UNITED STATES. plaintiff,
vs.
JOHN G. HALLIBURTON *et als.*, defendant.

And the said defendant, Halliburton, comes and defends the wrong and injury, when, &c., and claims oyer of the said writing obligatory, and it is read to, &c.; he also craves oyer of the condition of said writing obligatory, and it is read to him in these words, &c., which being read and heard, the said defendant says that the said
16 plaintiff ought not to have or maintain his aforesaid action thereof against the said defendant, because he says that he, the said defendant, before the commencement of this suit, to wit, on the first day of January, 1861, at, to wit, the district aforesaid, paid to said plaintiff the sum of three thousand dollars, part of the amount in the said conditioned mentioned, and this the said defendant is ready to verify, wherefore he prays judgment, &c.

And for a further plea in this behalf the said defendant, by leave of court here first had and obtained, says that he ought not to be charged with the said debt by virtue of the said writing obligatory, because, he says, that at the time of the [of the] commencement of

this action there was due and [and] owing from the said defendant to the plaintiff, by virtue of said writing obligatory, the sum of five hundred dollars and no more, and that the said plaintiff, at the time of the commencement of this action was, and still is indebted to the said defendant in a much larger sum of money than the money so due and owing from the said defendant to the plaintiff, by vir-
17 tue of the said writing obligatory and condition, to wit, in the sum of one thousand dollars, for work, labor, care and attention bestowed by said defendant, as marshal of the United States of America in and for the eastern district of Arkansas, in and about the taking of the census of [of] the State of Arkansas for the year 1860, at the special instance and request of said plaintiff, out of which said sum of $1,000 00 the said defendant is ready and willing, and hereby offers to set off and allow to the plaintiff so much money as will be sufficient to satisfy all the money due by virtue of the said writing obligatory and condition, and all damages sustained by occasion of detaining the same; and this the said defendant is ready to verify. Wherefore he prays judgment, &c.

WATKINS & ROSE.

Filed April 12, 1867.

CHAS. P. REDMOND, *Clerk.*

18

19 UNITED STATES OF AMERICA,

Eastern District of Arkansas:

Be it remembered, that at a District Court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the seventh day of October, anno Domini one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

On October 8th, A. D. 1867, it being yet a day of the October term, 1867, the further following proceedings were had, to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON *et als.*

And now this day comes the United States, by John Whytock, esq., U. S. attorney, and files herein her replication to defendant's first plea, which replication is in the words and figures following, to wit:

Dist. Court of the United States east. dist. of Arkansas, at Oct. term, A. D. 1867.

20 UNITED STATES, pl'ff,
vs.
JOHN G. HALLIBURTON *et als.*

And the said plaintiff, as to the said plea of the said defendant by him first above pleaded, saith, that the said plaintiff, by reason of any-

thing by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that the said defendant did not pay to the said plaintiff the said sum of three thousand dollars, part of the amount in the said condition mentioned in manner and form as the said defendant hath above in his said plea in that behalf alleged.

And this the said plaintiff prays may be inquired of by the country, &c.

JOHN WHYTOCK, *U. S. Att'y.*

Filed Oct. 8, 1867.

CHAS. P. REDMOND, *Cl'k.*

And on the same day, October 8th, A. D. 1867, as follows:

21 UNITED STATES
vs.
JOHN G. HALLIBURTON *et al.*

And now this day comes the United States, by John Whytock, esq., U. S. att'y, and files herein her replication to defendant's second plea, which replication to second plea is in the words and figures following, to wit:

District Court of the United States for the eastern district of Arkansas.

Replication to plea of set-off.

UNITED STATES
vs.
JOHN G. HALLIBURTON *et al.*

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because protesting that, at the time of exhibiting the said bill, there was, and still is, a much larger
21* sum of money than the said sum of five hundred dollars due and owing for principal, money and interest, upon and by virtue of the said writing obligatory, and the said condition thereof, to wit, the sum of three thousand nine hundred and forty-six dollars and sixty-five cents, at the district aforesaid; nevertheless, for replication in this behalf, the said plaintiff saith that the said plaintiff was not, nor is, indebted to the said defendant in manner and form as the said defendant hath above in his said plea alleged.

And this the plaintiff prays may be inquired of by the country, &c.

JOHN WHYTOCK,
U. S. Att'y.

Filed Oct. 8th, 1867.

CHAS. P. REDMOND, *Clerk.*

22 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a District Court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the sixth day of April, anno Domini one thousand eight hundred and sixty-eight, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 23d, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. JOHNSON *et al.* } Debt.

And now comes the United States, by John Whytock, esq., district att'y, and come the defendants, by Attorneys Watkins and Rose; and by consent and agreement of parties it is ordered that this cause be transferred to the Circuit Court of the United States for this district, and that the clerk of this court certify the record and pro-
23 ceedings in this cause to said Circuit Court.

24 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered that at a Circuit Court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the thirteenth day of April, anno Domini one thousand eight hundred and sixty-eight, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Samuel F. Miller, judge of the Supreme Court of the United States, assigned to this circuit, presiding, and Hon. Henry C. Caldwell, dist. judge, holding said court, the following proceedings were had, to wit:

And on April 24th, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. JOHNSON *et als.* } Debt.

Now comes the United States, by John Whytock, esq., district attorney, and come the defendants, by Watkins and Rose, their attorneys; and it is agreed by the parties hereto, by their said attorneys, that the papers and proceedings in this cause, certified from the District Court of this district, be filed herein, and that
25 this cause proceed in this court to final judgment in all things, and with like effect, as if the same had been originally commenced in this court.

And on April 25th, A. D. 1868, it being yet a day of the April term, A. D. 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. JOHNSON *et als.* } Debt.

And now come said defendants, by Watkins and Rose, their attorneys, and file herein their three additional pleas, and comes the plaintiff, by John Whytock, esq., district attorney, and by Solomon F. Clark, esq., and by consent enters, in short, upon the record her demurrer to defendant's third and fifth pleas, and her replication to defendant's fourth plea; and thereupon said demurrer to third and fifth pleas was heard, argued and submitted to the court, and by the court sustained.

26 And both parties announcing themselves ready for trial, a jury came, to wit: John Clifford, Robert Goar, Lafayette M. Harris, William B. Crosson, Didemus Lewis, Albert Adams, Thomas Jones, James M. Vance, Alexander Robertson, Avery S. Mustain, Henry Linde and Herbert W. Winthrop, being twelve good and lawful men of the district, who were duly sworn well and truly to try the issue joined, and inquire of the truth of the breaches and damages assess in this cause, and a true verdict to render according to their evidence; and thereupon the jury proceed to the evidence and argument of counsel, as well on part of the plaintiff as of the defendants; and having heard the evidence and been instructed by the court, consulted of their verdict, and returned into court the following:

"We, the jury, find for plaintiff, and assess her damages at fifty-six hundred and twenty dollars and seventeen cents.

"JOHN CLIFFORD, *Foreman.*"

It is therefore ordered, considered and adjudged, that said plaintiff, the United States, do have and recover of and from said defendants, John G. Halliburton, Richard H. Johnson and Andrew

27 J. Hutt, Silas F. Feild, Samuel F. Dolly and John J. McAlmont, the sum of twenty thousand dollars for her debt, and also the further sum of fifty-six hundred and twenty dollars and seventeen cents, for her damages found as aforesaid, together with all her costs in and about this suit expended, and have execution for fifty-six hundred and twenty dollars and seventeen cents, the damages aforesaid, and costs of suit, the payment of which damages and costs shall be a full satisfaction of this action, which three additional pleas are in the words and figures following, to wit:

In the United States Circuit Court, eastern district of Arkansas, April term, 1868.

Debt on penal bond.

THE UNITED STATES, plaintiff,
vs.
JOHN G. HALLIBURTON *et al.*, defendants.

And the defendants, for a further plea, say that they have faithfully kept and performed all the covenants in the condition of the said bond contained without this, &c.; and of this they put themselves upon the country.

28 WATKINS & ROSE.

And for a fourth and further plea the defendants say that it is not true, as stated in the declaration herein, that the said Halliburton had in his hands the said sum of three thousand nine hundred and forty-six dollars and sixty-five cents belonging to the plaintiff or any part thereof, in manner and form as the plaintiff hath thereof above alleged; and of this they put themselves upon the country, &c.

WATKINS & ROSE.

And for a fifth and further plea the defendants say that heretofore, to wit, on the 6th day of May, 1861, the convention of the State of Arkansas, assembled at the city of Little Rock, passed what is commonly called the ordinance of secession, by which they assumed to sever the political relations existing between said State and the government of the United States, and that soon thereafter the said convention, to wit, on the 7th May, 1861, required by an ordinance that all officers of the United States within the limits of this
29 State, meaning the State of Arkansas, having moneys of the United States in their hands, were required to hold the same subject to the future action of the convention; and that after that time the said Halliburton had no opportunity, and was prevented by public hostilities from paying over said money to the United States; and that afterwards, to wit, on the 1st day of June, 1861, the said convention passed an ordinance requiring all persons having money belonging to the government of the United, under severe penalties of fine and long imprisonment, to pay the same over to the treasurer of the State of Arkansas; and that the said convention and the government organized thereunder had the physical power to enforce its laws and decrees, and did enforce them as fully as any organized government might do for a long period of time thereafter, to wit, for one year; and that the defendant, Halliburton, yielding to the force and compulsion of the said government so organized, and having at that time no protection from the government of the United States, and not being in any wise able to resist the execution of the
30 said ordinance of said convention, did pay over the said

moneys in said declaration mentioned to the treasurer of said State of Arkansas, to wit, on the 21st day of June, 1861, and this he is ready to verify, &c.

WATKINS & ROSE.

Filed April 25, 1868.

CHAS. P. REDMOND, *Clerk.*

And on April 27th, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had, to wit:

UNITED STATES *vs.* JOHN G. HALLIBURTON, RICHARD H. JOHNSON *et al.*	Debt.

And now come said defendants, by Watkins & Rose, their attorneys, and file herein their motion in arrest of judgment and for a new trial, and thereupon said motion is heard, argued and submitted to the court.

31 Which motion in arrest of judgment and for a new trial is in the words and figures following, to wit:

In the Circuit Court of the United States, eastern district of Arkansas, April term, 1868.

UNITED STATES, pl'ff, *vs.* JOHN G. HALLIBURTON *et al.*, def'ts.	Debt on penal bond.

And the defendants move the court here to arrest the judgment herein and grant them a new trial, because they say:

1. The court erred in sustaining the plaintiff's demurrer to the plea of the defendant.
2. The court erred in permitting the plaintiff to introduce improper testimony to the jury.
3. And in excluding from the jury the testimony offered by the defendants.
4. The jury was not properly sworn.
5. The damages assessed by the jury are excessive, and not warranted by the declaration.

32 6. The judgment is irregular, and not in accordance with law.

WATKINS & ROSE.

Filed April 27, 1868.

CHAS. P. REDMOND, *Clerk.*

And on April 28th, A. D. 1868, it being yet a day of the Apri term, 1868, the following further proceedings were had, to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. JOHNSON, *et al.* } Debt.

And now comes the United States, by John Whytock, esq., district attorney, and come the defendants by Watkins & Rose, their attorneys, and the motion in arrest of judgment and for a new trial hereof was heard, argued and submitted to the court, and by the court overruled and denied.

33 And on April 29th, A. D. 1868, it being yet a day of the April term, 1868, the following further proceedings were had to wit:

UNITED STATES
vs.
JOHN G. HALLIBURTON, RICHARD H. JOHNSON *et al.* } Debt.

And now come said defendants by Watkins & Rose, their attorneys, and tender to the court their bill of exceptions to the judgment of the court, overruling their motion in arrest of judgment and for a new trial, which is examined and approved, and signed and sealed by the court, and ordered to be made a part of the record in this cause.

Which bill of exceptions is in the words and figures following, to wit:

United States Circuit Court, eastern district of Arkansas, April term, 1868.

UNITED STATES
vs.
JOHN G. HALLIBURTON *et al.* }

34 Be it remembered, that on this 25th April, 1868, this cause came on to be tried on the issue joined, and the plaintiff offered to read in evidence to the jury a copy of the bond sued on, to which the defendant objected, and the court permitted the copy of said bond to be read, in words and figures following:

[Copy.]

Know all men by these presents that we, John G. Halliburton, Jas B. Johnson, Rich'd H. Johnson, A. J. Hutt, Silas F. Feild, S. F. Dolley, J. J. McAlmont, of the county of Pulaski, are held and firmly bound unto the United States of America in the sum of twenty thousand dollars

lawful money of the said United States, to be paid to the said United States, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed with our hands and sealed with our seals this 26th day of July, 1859.

The condition of the above obligation is such, whereas the President of the United States hath, pursuant to law, appointed the said John G. Halliburton to be marshal of the United States
35 for the eastern district of Arkansas, to have and to hold the same, with all the rights, privileges and emoluments thereunto lawfully appertaining, for four years from the twenty-sixth day of July, 1859, unless sooner removed therefrom, as by a commission to him bearing date the first day of July, A. D. 1859, more fully appears.

Now if the said John G. Halliburton, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal then this obligation to be void; otherwise to remain in full force and virtue.

[SEAL.]	JOHN G. HALLIBURTON.
[SEAL.]	JAMES B. JOHNSON.
[SEAL.]	RICH'D H. JOHNSON.
[SEAL.]	A. J. HUTT.
[SEAL.]	SILAS F. FEILD.
[SEAL.]	S. F. DOLLEY.
[SEAL.]	J. J. McALMONT.

Indorsement of approval of bond by the judge.

"I, Daniel Ringo, United States judge for the eastern district of Arkansas, do hereby certify that the sureties named in the within bond possess means and ability to pay the full amount of the penal sum therein mentioned, and that said bond is sufficient.

36 Given under my hand at Little Rock, in said district, this 26th day of July, A. D. 1859.

DANIEL RINGO, *Judge.*

Filed and recorded this 1st day of August, 1859.

Attest: A. H. RUTHERFORD, *Clerk.*

Oath of office indorsed in the commission of John G. Halliburton, referred to in the foregoing bond, and entered of record, to wit:

"I, John G. Halliburton, do solemnly swear that I will faithfully execute all lawful precepts directed to the marshal of the eastern district of Arkansas, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal of the eastern district of Arkansas, during my continuance in said office, and take only my lawful fees; and further, that I will support the Constitution of the United States. So help me God.

JOHN G. HALLIBURTON.

Sworn to before me, and subscribed in my presence, by John G. Halliburton, at the city of Little Rock, in the eastern district of Arkansas, this 26th day of July, A. D. 1859.

DANIEL RINGO, *Judge.*

37 I, Archibald H. Rutherford, clerk of the District Court of the United States for the eastern district of Arkansas, do hereby certify that the above and foregoing one and one-half pages contain a full and complete transcript of the official bond and indorsement thereon of John G. Halliburton, marshal, &c., and the oath of office indorsed on his said commission as marshal, as remain of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of said District Court this 2d August, 1859, at the city of Little Rock, Arkansas.

[L. S.] A. H. RUTHERFORD, *Clerk.*

And the defendants at the time excepted to the ruling of the court in permitting said copy to be read, and obtained leave to save his exception by filing a bill of exceptions herein at any time during the present term of the court; and the plaintiff offered to read in evidence a transcript made from the books and proceedings of the Treasury Department of the United States, and the defendant at the time objected to reading the same, but the court permitted the
38 same to be read, in words and figures following:

TREASURY DEPARTMENT, REGISTER'S OFFICE,
January 26, 1867.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys," I, S. B. Colby, Register of the Treasury Department, do hereby certify that the annexed copies of the reports of the First Auditor of the Treasury, numbered 12,039 and 13,028, as admitted and certified by the Comptroller, upon the accounts of J. G. Halliburton, late United States marshal for the eastern district of Arkansas, and of the statements and statements of differences thereon, also the copies of the warrants and drafts issued upon the same, are a transcript from the books and proceedings of the Treasury, and that the copies of the accounts current of said marshal are true copies of the originals on file in this office.

S. B. COLBY, *Register.*

Be it remembered that S. B. Colby, esq., who certified the
39 annexed transcript, is now, and was at the timeof doing so, Register of the Treasury of the United States, and that full faith and credit are due to his official attestations.

In testimony whereof, I, Hugh McCullock, Secretary of the Treasury of the United States, have hereunto subscribed my name and

caused to be affixed the seal of this department, at the city of Washington, this 26th day of January, in the year of our Lord 1867.

[L. S.]

H. McCULLOCK,
Secretary of the Treasury.

40 [No. 12,039.]

TREASURY DEPARTMENT,
First Auditor's Office, March 12, 1860.

I hereby certify that I have examined and adjusted an account between the United States and J. G. Halliburton, marshal for the eastern district of Arkansas, and find that he is chargeable—

To warrants on the Treasurer:	
No. 1838, dated 30th January, 1860	$2,862 00
No. 1839, " " " "	1,422 00
Dollars	4,284 00

I also find that he is entitled to credit:

By amount of his compensation for attendance at the Oct. term, 1859, of the United States States courts	$45 00
By disbursements for contingencies for said courts	27 00
" commissions on $27 00, at 2 per cent	54
Leaving a balance due the United States of	4,211 46
Dollars	4,284 00

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

T. L. SMITH,
First Auditor.

To the First Comptroller of the Treasury.

COMPTROLLER'S OFFICE.

I admit and certify the above balance this twenty-first day of May, 1860.

W. MEDILL, *Comptroller.*

To the Register of the Treasury.

41

To warrants on the Treasurer—	Dr.
No. 1838, dated 30th January, 1860	$2,862 00
" 1839, " " " "	1,422 00
Dollars	4,284 00
Differences—	
Due U. S., per this statement	$4,211 46
Amount claimed by marshal's accounts	79 18
Differences	4,290 64
Arising as follows:	
Am't of following warrants charged herein not credited by marshal—	
No. 1838, dated 30th Jan'y, 1860	$2,862 00
" 1839, " " " "	1,422 00
	4,284 00
Add following suspensions, viz:	
Ac. for Cir. Court, ab. vouch. 1, he ch's for 8 days' attendance; allow for 7 days, 11, 12, 13, 20, 24, 25 and 26 Oct., and disallow 1 day, (see letter of cl'k, with his account per ref. 12027)	5 00

By am't of his compensation for attendance at the Oct. terms, 1859, of the United States courts	Cr. $45 00
By disbursements for contingencies for said courts	27 00
" commissions on $27 00 @ 2 per cent	54
" balance due the United States	4,211 46
Dollars	4,284 00

Vouch. 2, pay't to James, crier, for 8 days; allow 7 days, as above, and suspend one day, as above	2 00	
	4,291 00	
Deduct commissions allowed more than ch'g'd ac. for Dist. Ct., 08 cts.; ac. for Cir. Ct., 28 cts	36	
Difference above	4,290 64	

First Auditor's Office, March 10, 1860. THAD. STURGIS.
Comptroller's Office, May 21, 1860. JAMES AULD.

43

44 No. 13028.

TREASURY DEPARTMENT,
First Auditor's Office, Dec'r 8, 1860.

I hereby certify that I have examined and adjusted and account between the United States and J. G. Halliburton, marshal for the eastern district of Arkansas, and find that he is chargeable:

To balance due from him per report No. 12039		$4, 211 46
Dollars		4, 211 46

I also find that he is entitled to credit:

By am't of his compensation for attendance, travel and costs for the April term, 1860, of the United States courts		168 10
" disbursements for said courts:		
For jurors' attendance and travel	$26 10	
" contingencies	72 25	
		98 35
" commis. on $98 35 @ 2 per cent		1 96
Leaving a balance due the United States of		3, 943 05
Dollars		4 211 46

As appears from the statement and vouchers herewith transmitted for the decision of the Comptroller of the Treasury thereon.

T. L. SMITH,
First Auditor.

To the First Comptroller of the Treasury.

45 COMPTROLLER'S OFFICE.

To above balance due the U. S	3, 943 05
Add, as per amended statement	3 60
Corrected balance due U. S	3, 946 65

I admit and certify the above corrected balance this first day of April, 1861.

W. MEDILL, *Comptroller.*

To the Register of the Treasury.

	Dr.
To balance due from him per report No. 12039	$4,211 46
Dollars	4,211 46
Bal. due the U. S. per this statement	3,946 65
" " " " " " marshal's ac. current	3,914 32
Differences	32 33
Arising as follows:	
1. Acc't for Dist. C't ab. 4, vouch 5, case vs. Smith; 3 days' expenses in searching and 60 miles' travel disallowed, the warrant having issued from the Dist. Court of Southern Mississippi could not be legally served in Arkansas	8 10
2. Ab. 6, vouch. 2, pd. Whitlock for wood, suspended; no witness to his + mark	3 00
Commissions chg'd in this ac. current more than allowed	07

		Cr.
By am't of his compensation for attendance, travel, costs for April term, 1860, of the United States courts		$169 50
Disbursements for said courts:		
For jurors' attendance and travel	$26 10	
" contingencies	72 25	
		98 35
" com's on $98 35 at 2 per cent		1 96
" balance due the United States		3,946 65
Dollars		4,211 46

J. G. Halliburton, marshal, &c.—Continued.

Ac. for C. C.:	Dr.	Cr.
3. Ab. 6, pay't to Thomas Jackson to wait on court, suspended for want of voucher.....	$22 00	
	33 17	
Deduct commis. all'd in ac. for Cir. Court more than charged.....	84	
Diff. above.....	32 33	

First Auditor's Office, Dec. 7, 1860. THAD. STURGES.
Comptroller's Office, April 1, 1861. JAMES AULD.

47

48 Dft. No. 2292 on Treasury warrant No. 1838, Treasury of the United States, Interior, paid and cancelled March 26, 1860. P. T. Crutchfield.

WASHINGTON, *January* 31, 1860.

At sight pay to J. G. Halliburton, U. S. marshal, or order, two thousand eight hundred and sixty-two dollars.

W. B. RANDOLPH,
Act. Treasurer of the United States.

No. 2292, registered Jan'y 31, 1860, $2,862, P. T. Crutchfield, dep., Little Rock.

F. BIGGER,
Register of the Treasury.

Indorsed: J. G. HALLIBURTON,
U. S. Marshal.

Treasury Interior warrant; Interior No. 1838; appropriation, exps. of cts. of U. S.

P. C. TREASURY DEPARTMENT.

To the Treasurer of the United States, greeting:

Pay to J. G. Halliburton, U. S. marshal east. dist. Arkansas, or order, out of the appropriation named in the margin, two thousand eight hundred and sixty-two dollars, on acc't of his expenditures, and for which sum the said J. G. Halliburton is to be charged and held accountable. For so doing this shall be your warrant.

49 Given under my hand and the seal of the Treasury this thirtieth day of January, in the year one thousand eight hundred and sixty, and of independence the 84.

[SEAL.] HOWELL COBB,
Secretary of the Treasury.

Countersigned:

W. MEDILL, *Comptroller.*

W. H. N., R. and E. 31, $2,862, Om. 31; recorded.

Care of Hon. D. Ringo, dist. judge, Little Rock, Arks., dft. on P. T. Crutchfield, depositary.

F. BIGGER, *Register.*

Received for the above warrant draft No. 2292 on P. T. Crutchfield, dep., Little Rock, $2,862.

Draft No. 2293 on Treasury warrant No. 1839, $1,422 00, Treasury of the United States, Interior, paid and cancelled March 26, 1860. P. T. Crutchfield.

WASHINGTON, *January* 31, 1860.

At sight pay to J. G. Halliburton, U. S. marshal, or order, one thousand four hundred and twenty-two dollars.

WB. B. RANDOLPH,
Act'g Treasurer of United States.

No. 2293, registered Jan'y 31, 1860, $1,422, P. T. Crutchfield, dep., Little Rock.

F. BIGGER,
Register of the Treasury.

Indorsed: J. G. HALLIBURTON,
U. S. Marshal.

50 Treasury Interior warrant, Interior No. 1839, appropriation, exp's of courts of U. S.

Treasury Department to the Treasurer of the United States, greeting:

Pay to J. G. Halliburton, U. S. marshal for east. d't Ark's, or order, out of the appropriation named in the margin, fourteen hundred and twenty-two dollars, on acc't of his expenditures.

And for which sum the said J. G. Halliburton is to be charged and held accountable. For so doing this shall be your warrant.

Given under my hand and the seal of the Treasury this thirtieth day of January, in the year one thousand eight hundred and sixty, and of independence the 84.

[SEAL.] HOWELL COBB,
Secretary of the Treasury.

Countersigned:

W. MEDILL,
Comptroller.

W. H. N. $1,422. R. & E. 31. Om. Recorded 31.

Care of Hon. D. Ringo, dist. judge, Little Rock, Ark's. D'ft on P. T. Crutchfield, depository.

F. BIGGER, *Register.*

Received for the above warrant draft No. 2293, on P. T. Crutchfield, dep., Little Rock, $1,422.

51

52 *The United States in account with John G. Halliburton, U. S. marshal for the eastern district of Arkansas, for expenses of the United States Circuit Court, adjourned term of April term, 1859, held at Little Rock, Oct. 10, 1859.*

	Dr.	None.	Cr.
To compensation grand jurors, No. 1	.....		
" petit " No. 2	.....		
" witnesses, No. 3	.....		
" marshal, No. 4	$56 00		
Jailor's fees and expenses of supplies for prisoners, No. 5	.....		
Contingent expenses of court, No. 6	7 00		
Marshal's commissions on above, less am't of abstract No. 4, at 2 per cent	14		
	63 04		

EASTERN DISTRICT OF ARKANSAS, *ss*:

John G. Halliburton, marshal of the United States for the eastern district of Arkansas, being duly sworn, deposes and says that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper and were paid in good faith; and that all the items charged are correct and legal, and the ammount thereof justly due to him as therein stated, as he verily believes.

JOHN G. HALLIBURTON,
U. S. Marshal.

Sworn to and subscribed before me this 13th day of January, 1860. DANIEL RINGO, *Judge.*

53

54 *The United States in account with John G. Halliburton, U. S. marshal for the eastern district of Arkansas, for expenses of the United States District Court, held at Little Rock, Oct. term, 1859.*

	Dr.	None	Cr.
To compensation of grand jurors, No. 1	.....		
" petit " No. 2	.....		
" witnesses, No. 3	.....		
" marshal, No. 4	$14 00		
Jailor's fees and expenses supporting prisoners, &c., No. 5	.....		
Contingent expenses of court, No. 6	2 00		
Marshal's commissions on the above, less amount of abstract No. 4, at 2 per cent	04		
	16 04		

EASTERN DISTRICT OF ARKANSAS, *ss*:

John G. Halliburton, marshal of the United States for the eastern district of Arkansas, being duly sworn, deposes and says that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged, and all the expenses stated therein, were necessary and proper and were paid in good faith; and that all the items charged are correct and legal, and the amounts thereof justly due to him as therein stated, as he verily believes.

JOHN G. HALLIBURTON,
U. S. Marshal.

Subscribed and sworn to before me this 13th day of January, 1860. DANIEL RINGO, *Judge.*

55

56 *The United States in account current with John C. Halliburton, U. S. marshal for the eastern district of Arkansas, for expenses of the United States Circuit Court, held at Little Rock, April term,* 1860.

		Dr.	1860.	Cr.
To compensation of grand jurors, abs't	No. 1	.....	Ap'r 9. By balance in my hands.....	$4,120 98
" " " petit jurors,	" 2	$26 10		
" " " witnesses,	" 3	.....		
" " " marshal,	" 4	158 00		
" jailor's fees and expenses of prisoners, &c.....	" 5	.....		
" contingent expenses of court,	" 6	22 00		
" marshal's commissions on the above, less amount of abstract No. 4.....		 56		
		206 66		
Balance.....		3,914 32		
		4,120 98		4,120 98

Eastern District of Arkansas, *ss:*

John G. Halliburton, marshal of the United States for the eastern district of Arkansas, being sworn, deposes and says, that the services stated in the foregoing account and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished for and used by the court; that the disbursements charged and all the expenses stated therein were necessary and proper, and were paid in good faith, and that all the items charged are correct and legal, and the amounts thereof justly due to him as therein stated, as he verily believes.

J. G. HALLIBURTON,
U. S. Marshal for the Eastern District of Arkansas.

Subscribed and sworn to this 11th day of October, 1860, before me.

57 DANIEL RINGO, *Judge.*

58 *The United States in account with John G. Halliburton, U. S. marshal for eastern district of Arkansas, for expenses of the United States District Court, held at Little Rock, April term, 1860.*

	Dr.	1860.	Cr.
To compensation of grand jurors, abs't No. 1	.....	April 2. By balance in my hands	$4,211 46
" " " petit jurors, " 2	.....		
" " " witnesses, " 3	.....		
" " " marshal, " 4	$70 84		
" jailor's fees and expenses of supporting prisoners, &c.. " 5	.....		
" contingent expenses of court, " 6	19 25		
" marshal's commissions on the above, less amount of abstract No. 4, at 2 per cent.	 39		
	90 48		
	4,120 98		
	4,211 46		4,211 46

EASTERN DISTRICT OF ARKANSAS, *ss:*

John G. Halliburton, marshal for the United States for the eastern district of Arkansas, being duly sworn, deposes and says, that the services stated in the foregoing account, and in the abstracts and vouchers therein referred to, have been rendered as therein stated; that the supplies charged were furnished for, and used by the court; that the disbursements charged and all the expenses stated therein were necessary and proper, and were paid in good faith, and that all the items charged are correct and legal, and the amounts thereof justly due to him as therein stated, as he verily believes.

J. G. HALLIBURTON,
U. S. Marshal for the Eastern District of Arkansas.

Subscribed and sworn to this 11th day of October, in the year 1860, before me.

59 (Signed duplicates.) DANIEL RINGO, *Judge.*

60 And the defendants at the time excepted to the ruling of the court, and obtained like leave as before.

Thereupon the plaintiff closed her case. The defendants then had Dr. Halliburton sworn, who deposed that he was one of the defendants in the suit, formerly U. S. marshal for the eastern district of Arkansas; that he had written and mailed on the 25th March, 1868, to the persons to whom they were addressed on the face thereof two letters, of which he exhibited copies, which he said were correct and which are as follows:

[Copy.]

LITTLE ROCK, ARKANSAS, *March 25th*, 1868.

SIR: Having been sued in the District Court of the United States for the eastern district of Arkansas, on my official bond, as U. S. marshal for said district in 1860, I am unable to present, in the shape of a regular account, a statement of the credits claimed by me, oweing to the loss of my private papers and the destruction of the records of the U. S. Circuit and District Courts for said district during the late civil war, and I therefore request that a statement of such account be made out, as far as practicable, from the vouchers
61 and requisitions forwarded by me and on file in your department prior to May, 1861, with such endorsement of the allowance or rejection of the same as will enable me to have them allowed as credits or prove them to be such, on the amount claimed against me in said suit.

Very respectfully,

JOHN G. HALLIBURTON.

To the Secretary of the Treasury, Washington city, D. C.

[Copy.]

LITTLE ROCK, ARKANSAS, *March 25th*, 1868.

SIR: Having been sued in the District Court of the United States for the eastern district of Arkansas, on my official bond as U. S. marshal for said district in 1860, I am unable to present, in the shape of a regular account, of the credits claimed by me, oweing to the loss of all my papers during the late civil war, and I therefore request that a statement be made out, as far as practicable, from the
62 files of your office, showing the amount due me for taking the census of 1860, and forwarded to me, with such endorsement by the proper officer of the allowance or rejection of the same as will enable me to have it allowed as a credit, or prove it to be such, on the amount claimed against me in said suit.

Very respectfully,

JOHN G. HALLIBURTON.

To the Superintendent of the Census Bureau, Washington city, D. C.

To which letters he received answers by mail, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 3d April, 1868.

SIR: Referring to your letter of the 25th ultimo, I have to state that it does not appear on the records of the department that you have been credited by the late Superintendant of Census with an amount representing your services rendered as U. S. marshal in connection with the census of the eas. dist. of Arkansas, in the year 1860.

63 I am of the opinion that you are entitled to receive the sum of 428 03-100 dollars for the aforesaid service, having caused a careful examination relative to the duty performed by you in taking the census.

There are no funds held by the department applicable to the payment of eas. Arkansas census claims.

Should Congress during the present, or at any subsequent session, make the requisite provision to meet the outstanding liabilities of the eighth census, you will be duly and without delay advised thereof by this department.

Very respectfully, your obedient servant,

JOHN C. COX,
Chief Clerk.

To J. G. Halliburton, esq., Little Rock.

Differences.

Due U. S. per this statement		4,211 46
Am't claimed by marshal's ac'ts		79 18
Difference		4,290 64

64 Arising as follows:

Am't of following warrants, charged herein, not credited by marshal, No. 1838, dated 30 Jan., 1860	$2,862 00	
No. 1839, dated Jan. 30, 1860	1,422 00	
		4,284 00
Add following suspensions, &c., viz:		
Ac. for Circuit Court, ab. 4, vouch. 1, he ch'ges for 8 days' attend'e; allow for 7 days, 11, 12, 13, 20, 24, 25, and 26 Oct., and disall. one day, (see letter of cl'k, with his acc't, per report 12027)		5 00
Vouch. 2, pay't to James Crier for 8 days; allow 7 days, as above, and suspended one day, as above		2 00
		4,291 00
Deduct commissions allowed more than ch'g'd, ac't for Dist. Court, 08 cts., ac't for Cir. Court, 28 cts.		36
Difference above		4,290 64

65

J. G. Halliburton, marshal for the eastern district of Arkansas, in account with the United States.

	Dr.		Cr.
		By amount of his compensation for attendance at the Oct. terms, 1859, of the United States courts	$45 00
		" disbursements for contingent expenses for said courts	27 00
To warrants on the Treasurer:		" commissions on $2,700 @ 2 per cent.	54
No. 1838, dated 30th January, 1860	$2,862 00	" balance due the United States	4,211 46
" 1839, " " " "	1,422 00		
Dollars	4,284 00	Dollars	4,284 00

68 TREASURY DEPARTMENT, FIRST COMPTROLLER'S OFFICE,
April 3d, 1868.

J. G. Halliburton, esq., late U. S. marshal, Little Rock, Ark.:

SIR: Your letter to the Secretary of the Treasury, dated 25th ult., asking for a statement of your accounts, &c., has been referred to this office.

Herewith find copies of Treasury statements and statements of differences, numbered12037, and 13028, made on your two accounts adjusted in this office 21 May, 1860, and 1 April, 1861. As these will notify you of the items suspended and disallowed on the respective adjustments, with the reasons therefor, it is presumed they will furnish such information as your letter seems to call for.

If, however, it is your desire to procure copies of all the abstracts and vouchers in your acc's now on file in this dep't, they will be furnished on receipt of notice to that effect.

Very respectfully,

R. W. TAYLOR, *Comptroller.*

69 The defendants thereupon offered to read said letters and replies to the jury, and to prove payments made to the plaintiff and set off against her, and claims due said Halliburton for services rendered the plaintiff, as marshal as aforesaid; but the court would not permit either to be done, and to this ruling the defendants at the time excepted, and obtained like leave as before, and there was no other evidence in the case.

And now here, during the same term, the defendants present here this their bill of exceptions, which, being found correct, is signed, sealed and made a part of the record herein on this 29th April, 1868.

[SEAL.] SAM. F. MILLER.
[SEAL.] HENRY C. CALDWELL.

Filed April 29, 1868.

CHAS. P. REDMOND, *Clerk.*

On August 14th, A. D. 1868, came into the clerk's office said defendants, by Watkins & Rose, their attorneys, and file herein their
70 supercedeas bond, which is in the words and figures following, to wit:

In the Circuit Court for the eastern district of Arkansas.

JOHN G. HALLIBURTON, RICHARD H. JOHNSON, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley and John J. McAlmont, pl'ff's,
vs.
UNITED STATES OF AMERICA, def'ts. } In error.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, John G Halliburton, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley, John J. McAl-

mont, as principals, and John W. Hopkins, Noah H. Badgett, John W. Rison, James Cook and William H. Feild, as securities, are held and firmly bound unto the United States of America in the sum of ten thousand dollars, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated on this third day
71 of August, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named John G. Halliburton, Richard H. Johnson, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley and John J. McAlmont have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled suit by the Circuit Court of the United States within and for the eastern district of Arkansas rendered:

Now the condition of the above obligation is such that if the above-named John G. Halliburton, Richard H. Johnson, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley and John J. McAlmont shall prosecute their said suit of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.]	J. G. HALLIBURTON.
[SEAL.]	J. W. HOPKINS.
72 [SEAL.]	SILAS F. FEILD.
[SEAL.]	SAM'L F. DOLLEY.
[SEAL.]	JOHN J. McALMONT.
[SEAL.]	N. H. BADGETT.
[SEAL.]	JOHN W. RISON.
[SEAL.]	A. J. HUTT.
[SEAL.]	JOS. COOK.
[SEAL.]	W. H. FEILD.

Sealed and delivered in the presence of—

W. JOHNSON.
W. F. POPE.
R. A. POAGE.
M. S. STANFORD.

Approved August 12, 1868.

HENRY C. CALDWELL,
District Judge.

Filed August 14, 1868.

CHAS. P. REDMOND, *Clerk.*

And on the same day also file herein a citation to the United States, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court to be holden at Washington, on the first Mon-
73 day of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the eastern district of Arkansas, wherein John G. Halliburton, Richard H. Johnson, Andrew J. Hutt, Silas F. Feild, Samuel F. Dolley and John J. McAlmont are plaintiffs in error, and you are defendant in error, to show cause, if any you can, why the judgment rendered against the said plaintiffs in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry C. Caldwell, one of the judges of the Circuit Court of the United States for the eastern district of Arkansas, on this the 12th day of August, in the year of our Lord one thousand eight hundred and sixty-eight.

HENRY C. CALDWELL,
District Judge.

On which citation the marshal makes return as follows:

74 EASTERN DISTRICT OF ARKANSAS, *ss*:

Personally appeared before me, Isaac C. Mills, U. S. marshal for e'n dis't of Ark., who being duly sworn deposes and says, that he did at the city of Little Rock, Arkansas, in said eastern dis't thereof, serve a true and correct copy of the within writ of citation upon John Whytock, esq., U. S. dis't att'y for said district, by delivering to said Whytock the same at his rooms on this 14 day of August, 1868, at the hour of 11 o'clock a. m. of said day.

ISAAC C. MILLS,
U. S. Marshal.

Sworn to and subscribed this 14 day of Aug., 1868.

CHA'S P. REDMOND, *Clerk.*

Filed August 14, 1868.

CHA'S P. REDMOND, *Clerk.*

75

76 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Charles P. Redmond, clerk of the Circuit Court of the United States for the eastern district of Arkansas, in the eighth circuit,

hereby certify that the foregoing writings annexed to this certificate are true, correct and compared copies of their originals on file and remaining of record in my office.

In witness whereof I have hereunto set my hand and the seal of said court this thirtieth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-third.

Attest:

[SEAL.] CHA'S P. REDMOND, *Clerk.*

Clerk's fee $16 00.

C. P. R.

REC. 323—3

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In the Supreme Court of the United States.

December Term, 1869.

WILLIAM A. BEVANS AND OTHERS,

vs. [*No.* 126.

THE UNITED STATES:

AND

JOHN G. HALLIBURTON AND OTHERS,

vs. [*No.* 121,

THE UNITED STATES.

Writs of Error to the Circuit Court of the United States for the Eastern District of Arkansas.

ARGUMENT FOR THE PLAINTIFFS IN ERROR IN BOTH CASES.

GAZETTE PRINT. Little Rock, Ark.

ARGUMENT FOR PLAINTIFFS.

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BEVANS *et al. vs.*, UNITED STATES, No. 126.
HALLIBURTON *et al., vs.* UNITED STATES, No. 121.

—o—

Bevans was Receiver of Public Moneys in Arkansas, and Halliburton was Marshal in the same state, when the late war between the two sections of the Union began, and failing to account to the United States as alleged, they and their securities were sued in the United States Circuit Court at Little Rock, at the April term, A. D. 1867, and defence being made, judgments were recovered against each (B. and H.) and their securities for the amounts claimed of them respectively. Exceptions were taken during the trials and the cases are brought here on writ of error to reverse these judgments.

The two cases rest, so far as the chief point is concerned, on the same defence, and they may therefore be submitted together, and as one case. There are some differences on other and minor points, which will be noticed at the close of this argument, but the leading defence is the same, and arises on the 4th plea in Bevans' case. See *Transcript in* 126, *page* 10 (29) *et seq.* That plea, in substance, claims, that because of *Arkansas* becoming a portion of the Southern Confederacy, and seizing the funds in the hands of all United States officers, for the purpose of carrying on the war

against the United States, by ordinance of her convention, which ordinance was enforced by absolute power not to be resisted by those officers, and if resisted by them would have cost them their lives—the plaintiffs were released. In other words, those officers assume that the moneys sued for, were taken from them by an authority to which they were subject, and which they could not resist; that, by *force, compulsion and duress*, they paid the moneys to the State of Arkansas, or her agents, and therefore failed to account to the United States. This, as appears from the plea, was done after (6th May, 1861,) the state had passed her ordinance of secession.

The ruling of the court below is that this defence is, and was not valid. The purpose of this argument is to show the defence interposed is good and should have been so held.

The bonds in suit are not for the absolute payment of an ascertained sum of money: but they are for the performance of certain duties of office, and among them, to receive moneys for the United States, and keep the same safely, and pay them over to the United States. And the particular breaches here are, that those officers collected certain moneys and failed to pay over the same. It is then certain in the beginning, that on the giving of these bonds, H. and B. were not the debtors of the United States in any just sense of the term. Their being debtors depended upon the facts of collecting, and not paying over. These facts depended upon many agencies besides those subject to the control of H. and B., and with an eye to all these, in this character of bailees or trustees for the United States, the law says the parties contracted. The rule is different, of course, when a party obligates himself unconditionally to pay a certain sum of money by a fixed day. There he makes his own contract without reservation, upon his own terms, and he is agent or trustee for himself only. He undertakes to do the whole duty and assumes all responsibility for failing. But in these cases the parties can do, or are obliged to do, only as far as they could do of their own power, and not prevented by causes beyond their control. Being the collectors and custodians of this money, they were to keep it safely and pay the same to the United

States if *possible*, and if not *possible*, the law requiring impossibilities of no one or "*Lex non cogit ad impossibilia*," or as some authors have it, "*Nemo tenetur ad impossibilia*," they were discharged. Upon principle, upon analogy, and by authority, it is believed, these cases can be brought under the control of this wise and salutary rule, "a rule," it is submitted as applied here, "drawn out of the depth of reason."

"In *all cases* where a condition of a bond, recognizance, etc., is possible at the time of the making of the condition, and before the same can be performed, the condition becomes impossible by the act of God, or of the law, or of the obligee, then the obligation is saved." *Co. Litt.* 206, *a.*, and with this we have another proposition of this kind: "No one is responsible for an accident which arises from the *vis major*." 2 *Kent. Comm.*, 448; *Poth. Pret. a usage* 2, 482, 60; *Story Bailm, sec.* 25. The term *vis major*, is used in the civil law in nearly the same way that the words *act of God* are used in the common law, and in many of the adjudicated cases in our common law courts, we find the term indiscriminately used, and coming more directly under the meaning of "*fortuitous event*," which the civil law uses to express, or indicate that which happens by a cause, which can not be prevented. *Louis. Code, art.* 2522, *No.* 7; *Lois. des. Bat.. pt.* 2, 22, *sec.* 1.

More pertinent to the particular question, we have here "*force and fear*," force upon these officers, and fear produced therefrom, resulting in an act otherwise unlawful—and bringing the case under what *Mackeldey* calls *vis et metus. Kaufman's Mackeldey, section* 167.

Draw what distinctions we please, call it by what name our taste may dictate, it is law, that one prevented from performing the conditions of his bond by a superior force he can not resist, that force not produced by his own agency, he is relieved. *Chitty on Cont.*, 272, 3; 8 *T. Reps.*, 267; 6 *ib.*, 650; *Com. Dig., assumpsit G.*; *ib., D.* 1; 2 *Black. Com.*, 340; 1 *Roll. Ab., Condition*, 1; 7 *Mass.*, 325; 13 *ib.* 94; 1 *Ld. Raym.*, 112; 23 *Ark.*, 415; 7 *Wall.*, 205. And it is more than likely, there is not a system of jurisprudence known to the civilized world, that recognizes the principle any less than the common law:

Domat says (*vol.* 1, *p.* 174, *sec.* 190,) no body is bound, in any kind of covenant, to answer for losses and damages occasioned by accident, such as a thunderbolt, an inundation, a torrent, *force*, and other events of a like nature." *Ib. sections* 485, 499, 540, 1241-55; 1 *Pothier Ob.*, 169-71 (131;) *ib.* 379 (368;) 69, *ff. de. verb., oblig; Lindley Juris*, 82, *et seq. Lieber's Hermeneutics* 144.

Erskine Inst., *p* 937, makes the same classification that Mackeldey does, and says, to avoid or relieve the contract, the force must be such as to shake a man of firmness and resolution.

Gaius. Inst., *p.* 536, *sec.* 7, (Tomkins and Lemon Translation) says an obligation may be extinguished by destruction of the thing due, or the impossibility of fulfilling the obligation.

Whether the facts disclosed by the plea, and which the court would know, are sufficient to have shaken a man of firmness and resolution, and to have rendered the fulfilling the obligation an impossibility, can require no argument. Whether Halliburton and Bevans were or are men of firmness and resolution, it is not necessary to inquire, but I think I hazard nothing of truth in saying, and that too without disrespect to the illustrious person named, that even Julius Cæsar, who, it is said, with danger was littered in one day, but Cæsar the elder and more terrible, would have been shaken, had he been subjected to the ordeal discovered by the plea.

The following is about as satisfactory on this subject as probably can be found: "We shall find (generally speaking) that the party is clear of liability, because he is clear of intention or inadvertence—thus, no one is liable for a mischief resulting from *accident* or *chance* (*casus*)—that is to say, from some event (other than act of his own) which he was unable to foresee, or foreseeing, was unable to prevent. Whether the event happens through the intervention of man, or whether without the intervention of man, is not important: the essence of *casus*, *chance* or *accident* lies in this, that the event was not an act done by the given party, and could not have been foreseen or prevented by that given party—this, I think, is the meaning of *casus* or *accident* in the Roman, of *chance* or *accident* in our law." 1 *Austin Juris*, 492-3. This rule, as ex-

pressed in that cogent and pointed style of Mr. Austin, so universal as we have seen it, covers the cases here presented, and is quite sufficient to relieve these parties before an enlightened tribunal, which has ever shown itself entirely free of David's accusation of Joab, "that he had shed the blood of war in peace." But it is proposed to notice briefly some of the cases in which this rule has been directly illustrated.

In *Evans v. Hutton*, 4 *Man. & G.*, 954, the defendant undertook to carry the plaintiff's goods from Liverpool, and to land them at Canton. On arriving there, the British superindent of trade, acting under the orders of the government in England, prohibited the defendant from landing the goods, and loss ensued, and this prohibition was pleaded by the defendant, and the court held that if the performance of the contract was rendered unlawful by the government, and the defendant thereby prohibited from carrying it out, the agreement was dissolved.

So too was it held in *Barker v. Hodgson*, 3 *M. & S.*, 267 *et seq.*, that should the exportation of the particular commodities be prohibited by the country to which the ship and cargo belong, the party undertaking is absolved: See, too, *Lord Anglesia v. Church Wardens of Rugby*, 6, *Q. B.*, 104-7; *American Jurist, Oct.*, 1833, *p.* 251; *Chaney v, Overman*, 1 *Dev. & Batt*, 402.

Upon this very ground has it been so often held, that if a voyage becomes illegal, or is prevented by superior or "*usurped force*," the contract will be dissolved, and the bills of lading, if signed, can not be enforced: *Brown v. Delano*, 12 *Mass.*, 370; *Palmer v. Lorillard*, 15 *Johns.*, 14; *S. C.*, 16 *Johns.* 348; *Odlin v. Ins. Co.*, 2 *Wash. C. C.*, 312; 1 *Phillips Ins.*, 733; *Angelt on Carriers*, 155; *Abbott on Shipping*, 596. There is not an excuse rendered in one of the cases cited, or in one reported, it is ventured to assert, that can not be given in favor of Halliburton and Bevans, and with circumstances of even greater palliation than the books in the numerous cases reported yet mention. Surrounded and threatened with this force, and altogether subject to the laws passed for this purpose, they surrendered the money, and it is as idle as whistling to tombstones, to talk of their resisting the man-

dates then sent forth. Wherefore the ruling in the *United States v. Dashiel*, 4 *Wall.*, 182, and in the other cases in this court, therein referred to, can, in no legitimate view, furnish a precedent here —the cases occurred in a different state of society, under very different circumstances. The *Dashiel* case was one of an officer keeping money at his own peril, and losing it by theft, he was held responsible—while these cases show the parties were compelled by *law* and by force to pay up this money, and it was to them, as *death or the Koran*. No one not troubled with obliquity of legal vision can assimilate the cases.

But to other decisions:

In *Morrow v. Campbell*, 7 *Porter*, 44, the Supreme Court of Alabama, say, "to excuse the performance of an express covenant, it must be shown either it is prohibited by law, or that its performance has become impossible by the intervention of causes which human agency could not prevent." While it is true *human agency* did bring about the state of affairs that caused these officers to fail in performing their covenants, it may be safely asserted, that no human agency could have prevented this. We take human agency as we see it manifested in acts and conduct, and to such is the law always intended to apply; and it is not going too far to say, that unless human agency could have been so changed by revolutionizing and recasting human nature, it was powerless to avert that sad calamity—the late war. To speak more directly, however, and as applying the rule stated, nothing that Halliburton or Bevans, or their securities could do, would have prevented the event referred to. And this is really the sense of the rule as applied, for the same court (7 *Porter*, *sup.*,) say "the loss of the deed is not pretended to have been occasioned by any cause which care and prudence could not have prevented, and we can not well conceive how it could have been lost, otherwise than from the want of carefulness." The utmost care and prudence, which man is capable of exercising, on the part of these officers and their securities, could not have avoided the results here pleaded; and the plea interposed expressly negatives all *want of carefulness* on the part of the principals in the bonds, and shows that for no fault of

theirs, but through and by *superior and irresistible force* they were compelled to pay the money to others besides the obligee in the bonds.

In *Kercheval v. Harney, Meigs.* (*Tenn.*) *Rep.*, 403, the court held, the obligee in the bond discharged because the breach was caused by legal constraint, and in that case many of the decisions above cited are referred to.

The same was held as expressly in *The People v. Manning*, 8 *Cow.*, 297, and exactly similar is the case of *The People v. Bartlett*, 3 *Hill*, (*N. Y.*) 570. See too *Whitney v. Spencer*, 4 *Cow.*, 39; *Carpenter v. Stevens*, 12 *Wend.*, 589; *Mounsey v. Drake*, 10 *Johns.*, 27.

In all the last mentioned cases, the court will find the bonds to be absolute—as much so as these sued on here.

Belding v. State, 25 *Ark.*, was this: Belding went security for the appearance of Caruthers, on his recognizance in the circuit court, at a certain term, but before that term arrived, Caruthers was arrested by military authority and sent to Vicksburg, where he was held at the coming on of the term of the court when he was to have appeared in discharge of his recognizance, and Belding pleaded this fact, and that he could not produce Caruthers as he was held by the military. The circuit court held this plea bad, on demurrer, but the supreme court of the state reversed the holding of the circuit court, and ruled the plea good. Here was an obligation as express and as absolute as language could make it—no exceptions or conditions whatever were contained in the recognizance, but it was an unqualified obligation that Caruthers should be at the circuit court at a certain term. He was not there, and for the reasons stated, which reasons, the supreme court very justly held, discharged his security. In this case the court referred to the cases above cited from the New York Reports.

But more yet to the point:

In *Pollard v. Shaffer*, 1 *Dall.*, 230, it seems, among other things, the lessee of a house covenanted for himself and assigns to deliver the premises in good repair, and in an action of covenant on this lease, the lessee pleaded that an alien enemy, viz: the *British*

army had invaded the city of Philadelphia, taken possession of the premises and held the same to the end of his term of lease, and during that time had committed the waste and destruction: and on this the court held he was excused from the covenant to repair. Like the bonds of H. and B., the covenant here was express and unqualified, and like H. and B. the lessee here was prevented from performing by *vis major*, and very sensibly he was not held responsible.

In *The United States v. Collier*, 3 *Bl. C. C. Rep.*, 349, which turned, as to the point involved here, on the responsibility of the collector for the conduct and liabilities of the deputy collector, the court held that even if that responsibility existed, and the money was stolen, the collector was discharged, and on that point the court directed a verdict to this effect (p. 350,) "The defendant is not liable for the $8,110.29 charged against him, which was received by the deputy collector, and which was stolen from him without default on his part or *that of the collector.*" As in *Collier's* case the officers were at no fault, guilty of no neglect, no mismanagement, but the moneys were taken from them by force, and a force, it is insisted more angry and more terrible than that which was established in *Collier's* case. It is useless to attempt to add any thing to *Collier's* case, since it came to this court and was affirmed, and that standing, there is no room now for the most disputatious, or sceptical counsel to combat the validity of the defence offered by Halliburton and Bevans. Although Collier's case was affirmed because of the judges of this court being equally divided, it is no less authority, and it is no less conclusive: 7 *Wall.*, 107-13; *ib.* (*appendix*) 753-5.

These cases come under every classification of duress laid down by this court in *Brown v. Pierce*, 7 *Wall.*, 215, and with the ruling there as to what duress would avoid a deed, and with the cases noticed already, and especially the ruling in *Collier's* case, there can be but little room to hesitate or doubt in this investigation.

Not only this, but had Haliburton and Bevans been special trustees, holding these moneys for investment, or to be applied for

the advantage of the government, and had been deprived of the same as here pleaded, equity would not have hesitated to relieve them of all liability in respect of this trust: 1 *Spence Eq., Juris.*, 437-59; *Hill on Trustees*, 518 *et seq.*, (2*d Am. Ed.*)

In a mere matter of bailment there is no shadow of doubt, but that they would go acquit of all liability: *Story Bailm., section* 23-5; *Jones Bailm,*, 104-5.

It has been seen, in part of the duties they were *trustees—bailees.*

But if this does not discharge them, it is proposed to notice the cases some what further as affected by the political condition of the country when this taking of the funds occurred, and this it is submitted will most clearly relieve the parties now involved.

In *Atkinson v. Ritchie* 10, *East.* 530, *Lord Ellenborough* made this ruling: "Neither can it be questioned, that, if from a change in the political relations and circumstances of this country, with reference to any other contracts which were fairly and lawfully made at the time, they have become incapable of being any longer carried into effect, without derogating from the clear [illegible] duty which a *British* subject owes to his sovereign and which he is a member, the performance of a contract circumstanced, is not only excusable, but a matter of perem[illegible] duty and obligation on the part of the subject,"—and he proceeds to state that, in order to make the objection and defence, an actual change in the political relations should take place. In the present cases an actual change had taken place, so far as to put at defiance the general government, and for the time to be supreme in all things within its sphere. If it be true that the "*public duty*" owed by these officials to the government was paramount, they are blameless in not rendering that duty under all codes, when even that government could not shield them in so doing. There must have been a mutuality in this, as in all contracts—so that when H. and B. contracted to faithfully serve the United States, she contracted to protect them in such service. Halliburton and Bevans might have had, at the time named, any quantity of money to have paid the United States, but they could neither carry it to the United States treasury, nor could her fiscal agents have come to

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them and received it. No government ought to expect services of her employees or agents when she is powerless to protect them while rendering such service. For example, suppose Bevans in making one of his quarterly returns to his superior officer, was compelled to go into and through the lines of the enemy with his funds, as would have been the case had he attempted to account after the 6th of May, 1861, law, morals and duty all would have commanded him not to attempt this—or in the language of *Lord Ellenborough*, *"the non-performance is not only excusable, but a matter of peremptory duty and obligation."* The argument then, that he should have paid over to the United States, or not paid over to others as he did, goes too far—it proves too much. If then it was his duty not to have attempted this, it is strange if this is not a good defence. It is an anomaly, surely, that a man, in not doing an act discharges a *"peremptory duty,"* yet this will not serve him as a defence in an action against him for failing to do otherwise. The proposition is a positive contradiction upon its face, and can not live in a pure judicial atmosphere.

Now then, the United States herself, thus failing, and by her inability, or want of power or something else, to protect her agents, and her own interests in this behalf, is not this such an act of the *obligee* as, according to all the authorities, back unto *Coke* himself,—will relieve the obligors? She could not have done any act positively, more disastrous—no kind of estoppel could have worked more directly than this. It is not worth while now to inquire whether the force that stopped her was lawful, or otherwise, even if it be what *Lord Mansfield* called *" usurped power,"* it was sufficient to put her at defiance, and leave her in default as to protection to all those people in that section, controlled by this power, owing her allegiance.

So we have a force—*a fortuitous event*—not brought about by the parties, and we have the inattention or inability of the general government, and *" a supine negligence is full of peril, and often as fatal as positive dishonesty,"* and both are held in law sufficient to discharge the parties. In other words, the *vis major*, the act of the obligee and the act of the law,—either of these will discharge the

obligor. We have seen the operation of the first two, let us see as to the act of the law. By this is meant here the law to which these parties were then amenable.

Beginning with the *Prize cases*, 2 *Black*, 635; and coming regularly down to the present, we find it established now, that the late war was something more than a mere mob, or a neighborhood disturbance. It is beyond all doubt there was a government here in these states, commanding, and enforcing its commands, and to that government obedience was yielded by the people—and there was no other to dispute its sway, and for all purposes during that time, its people obeyed it, and they were justifiable in so doing. All this has been upheld—its money recognized—its officers recognized, and all at last looked upon as the results of an authority valid for the time, because capable then of doing what it did. It was upheld and sustained by the people, and therefore being and acting and doing it was a *de facto* government. And after all the excruciating documents, of as many meaningless words as possible, that have fallen upon us on this subject, *Buckle* struck it, as he did generally, whatever be aimed at, when he spoke of the distinction between *de facto* and *de jure* as an absurdity, as if any man could retain a right to a throne which the people would not allow him to occupy. 1 *Buckle, Hist. Civ.*, 297, *note* 175. It was a government *de facto* and *de jure* for the time because *it existed; Wheaton Law Nations*, 56 (3 *Ed.*) Here was a government organized over *H. and B.*, and commands issued by it, and they were citizens here, and amenable to that government for the time, and yielding that obedience which that *de facto* government required of them, and was capable of enforcing, and did enforce, —they are free of liability on that score. The government here, of which Arkansas was a component part, and for whose interests she was then working, was one of paramount force, having actual supremacy within certain territorial limits, and therefore civil obedience to this authority was the duty of the inhabitants of that territory controlled by that authority. This is as clear as any proposition ever conceived by the brain of man, and such is the legal logic, and almost the language of *Cæsar Griffin's case*, of

Supreme Court of the United States.

DECEMBER TERM, 1870.

BEVANS *et al.*
vs.
THE UNITED STATES. } No. 126.

HALLIBURTON *et al.*
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ADDITIONAL BRIEF FOR PLAINTIFFS IN ERROR.

Since presenting my brief in these cases on behalf of the plaintiffs in error I have read the opinion of this court in Keehler's case, from North Carolina, and I deem it well to call the attention of the court to the essential difference between that case and these, both upon its pleadings and the facts.

In Keehler's case this court placed the defense under three separate heads or divisions: the first two of which have no pertinency to these cases at all; but the third head brings up to some extent, but not fully, the main question involved in these cases. This decision in Keehler's case appears to amount to this: "Throughout the year 1862 the so-called confederate government had force sufficient to enforce its orders, and did enforce them, in that part of North Carolina where defendant resided, and that no protection was afforded citizens of that part of the State by the United States Government during that period." The most cursory examination of these records will show the court at once what a striking difference there is in the defenses interposed. But

the language of the court on this third head or division, in pointing out its defects, so fully expresses just what the defense in these cases contain, it is best to quote it here: "It will be observed (says Judge Miller, for the court) that this statement falls far short of showing the application of any physical force to compel the defendant to pay the money," &c. Now, the plea in these cases averred all that this statement contains, and even more: that "application of physical force to compel" Halliburton and Bevans "to pay the money," was had; and under such application, and nothing else, they did pay it over. And the plea in these cases goes still further, and avers, that under an ordinance of the State of Arkansas, carried out by actual force, where the authority of the United States had been completely displaced by this very force. The court proceeds to say: "Nor does it prove that he (Keehler) would have suffered any inconvenience, or been punished by the confederate authorities, if he had refused to pay the draft. But in these cases the plea shows these parties were threatened by force, and their *inconvenience*, in case of refusal, would have amounted to imprisonment, and even death itself. Then the court thus concludes on this branch of the defense in Keehler's case:

"We cannot concede that a man who, as a citizen, owes allegiance to the United States, and, as an officer of the Government, holds its money or property, is at liberty to turn over the latter to an insurrectionary government, which only demands it by ordinances and drafts drawn on the bailee, but which exercises no force or threat of personal violence to himself or property in the enforcement of its illegal orders."

With this general proposition no issue will be raised here; but it is admitted that there must have been a *vis major*—a force which cannot be resisted, (*cui resisti non potest;* Emerigon, 285 and notes.) And this irresistible, this overwhelming and destructive force, was applied in these cases. If this is not shown here, then the authentic annals of the history of war do not afford a single instance of the exhibition of a superior, or irresistible force. The plea here went even the full length that Sir William Jones seemed to require,

and negatived the suspicion of fault or negligence. (Jones Bail., 43 and notes.) Story thought Sir William stated the rule in rather strong terms, and took the ground that, in pleading the money to have been lost by theft, it was not necessary to go thus far, but the facts would settle the question as to negligence or not. (Story Bail., 336–339.) This, too, as applied to *theft* merely; but when the question has arisen as to an open, illegal, forcible taking—robbery or what not—which the party could not resist, Jones, Story, and all agree that this excuses the agent or bailee. (Jones' Sup., Story *ubi sup.*, 26; Kent's Com., Lect. 40, pp. 580, 581.) Or, "it is," as Emerigon says, (p. 419,) "a case fatal, that could neither be foreseen nor prevented."

And the court must be reminded that these cases go far beyond even theft, robbery, or anything yet presented to this court. Neither Prescott's case, nor Dashiell's case, nor Morgan's case, can furnish any just standard by which to try these causes. Those cases, applied here, can have no good effect; they might encumber and oppress them, but explain and illustrate they cannot. And it is firmly believed that the reasoning of this court, in showing wherein Keehler's defense on this point was not good, sustains the plea here throughout. Bevans and Halliburton did not pay on *ordinances and drafts* merely, but on ordinances backed with bayonets, those bayonets carried and supported by living men, ready and willing to use them, if they had refused to obey their orders; intimidation, threats, actual force, all were there to compel, and did compel payment. Surely law is not based upon justice, if these men are liable on these bonds; and surely this court is not now ready to overthrow Collins' case, cited in the former brief, without giving more reason than is assigned in Keehler's case.

If laws are not made for words, but for things, and if right is founded, not in opinion, but in nature itself, then these parties must be discharged.

A. H. GARLAND,
For Plaintiffs.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JOHN G. HALLIBURTON *et al.*, *Plaintiffs in Error*,
vs.
THE UNITED STATES.
} No. 121.

In error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF OF THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a suit brought in the district court of the United States for the eastern district of Arkansas, by the United States, against John G. Halliburton and his sureties, on the official bond of Halliburton, as marshal of the United States for the eastern district of Arkansas. The bond, after reciting the appointment of Halliburton as marshal, &c., has the condition, that if said Halliburton, by himself and his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void, otherwise to remain in full force and virtue. (Printed transcript, pp. 12 and 13.)

The penalty of the bond is $20,000. The breach

alleged is, that after the making of said writing obligatory, to wit, on the first day of April, 1861, said Halliburton was indebted to the United States in the sum of $3,946 65, for moneys, before that time and since the making of said writing obligatory, received by him as marshal for the use of the plaintiffs, which sum of money remained wholly unpaid; and also that this sum was a balance of money due to the United States, after deducting all credits due Halliburton from the United States to which he was entitled; by reason whereof, said writing obligatory has become forfeited, and an action has accrued to the plaintiffs to recover said sum of $20,000. The defendant, Halliburton, craves *oyer* of the writing obligatory and its condition, which is granted and pleads, *first*, that on the first day of January, 1861, he paid to the plaintiffs the sum of $3,000, part of the amount; *second*, that he ought not to be charged with the said debt, because at the time of the commencement of the action there was due and owing from the said defendant to the plaintiffs, by virtue of said writing obligatory, $500, and no more; and that the plaintiffs, at the time of the action, were, and still are, indebted to him in a much larger sum of money than the money so due and owing from the said defendant, to wit, in the sum of $1,000, for work, labor, care, and attention bestowed by said defendant as a marshal of the United States in and for the eastern district of Arkansas, in taking the census of the State of Arkansas in 1860, at the special instance and request of said plaintiffs, out of

which said sum of $1,000 the said defendant is ready and willing, and hereby offers, to set-off and allow to the plaintiff so much money as will be sufficient to satisfy all the money due by virtue of the said writing obligatory and condition, and all damages sustained by occasion of non-payment. (Printed transcript, pp. 5 & 6.)

To the first plea, the United States reply, that the defendant did not pay the plaintiffs said sum of $3,000, as he pleaded; and to the second plea, protesting that there was, at the time of the commencement of the suit, and still is, a much larger sum of money than $500 due and owing to the plaintiffs by virtue of the said writing obligatory, to wit, the sum of $3,946 65, they reply that, nevertheless, the plaintiffs were not indebted to said defendant in manner and form as the said defendant alleged in his second plea.

April 23, 1868, by consent and agreement of the parties, it is ordered in the district court that the cause be transferred to the circuit court of the United States for the district, and that the clerk certify the record and proceedings to said circuit court; and on the 24th of April, 1868, in the circuit court, it is agreed by the parties that the papers and proceedings certified from the district court be filed in the circuit court, and that the cause proceed in the circuit court to final judgment in all things with like effect as if the case had been originally commenced there.

In the circuit court the defendants filed three additional pleas, (printed transcript, p. 10:) the first of

which, to be called the third plea, is a plea of general performance; the fourth, that it is not true that Halliburton had in his hands said sum of money in manner and form as the plaintiffs have alleged; and the fifth, that on the 6th day of May, 1861, the convention of the State of Arkansas passed an ordinance of secession, and thereafter, on the 7th of May, 1861, provided by an ordinance that all officers of the United States in Arkansas having moneys of the United States in their hands be required to hold the same subject to the future action of the convention; that after that time Halliburton had no opportunity and was prevented by public hostilities from paying over said moneys to the United States; and that afterwards, to wit, on the 1st day of June, 1861, the said convention passed an ordinance requiring, under severe penalties of fine and long imprisonment, all persons having moneys belonging to the Government of the United States to pay the same over to the treasury of the State of Arkansas; that said convention and the government organized thereunder had physical power to enforce its laws and decrees, and did enforce them as fully as any organized government might do; and that the said Halliburton, yielding to the force and compulsion of the said government so organized, and having at that time no protection from the Government of the United States, and not being in anywise able to resist the execution of the said ordinance of said convention, did pay over the moneys in

said declaration mentioned to the treasury of the said State of Arkansas on the 21st of June, 1861.

The United States, by their attorney, by consent, enter in short upon the record a demurrer to the defendants' third and fifth pleas, and a replication to the defendants' fourth plea; and the demurrer to the third and fifth pleas was heard, argued, and submitted to the court, and by the court sustained. (Printed transcript, p. 9.) A jury was then impanelled to try the issues, who returned a verdict for the plaintiffs, and assessed damages at $5,620 70, being the amount declared for, with interest, on which judgment was rendered for the penalty of the bond, and execution awarded for the damages found.

The defendants moved an arrest of judgment and for a new trial, which were denied on the 28th of April, 1868, and on the 29th of April, 1868, a bill of exceptions was signed, sealed, and filed in the circuit court, (printed transcript, p. 30,) and subsequently a writ of error to this court was sued out.

ARGUMENT.

I. The bill of exceptions (printed transcript, pp. 12 to 30) contains, first, an exception to the ruling of the court permitting a copy of the bond sued on to be read to the jury as evidence. This copy is certified as a full and complete transcript of the official bond, and indorsements thereon by the clerk of the district court of the United States for the eastern district of Arkansas,

under its seal, in whose office the original was according to law deposited. This is in accordance with the first section of the act of April 10, 1806, (2 Stat. 272,) which makes a copy competent evidence. This exception is not noticed in Mr. Garland's brief for the plaintiffs in error, and is, I suppose, abandoned.

II. The second exception is to the ruling of the court permitting a transcript made from the books and proceedings of the Treasury Department of the United States to be read to the jury. No special objection to its form was made, and so far as is known it is in regular and proper form. That a Treasury transcript is competent evidence to show an indebtedness to the United States of a public officer and his sureties, for moneys received by such officer by virtue of his office, and belonging to the United States, is well settled. Walton *vs* The United States, 9 Wheat., 651; Bruce *vs*. The United States, 17 How., 437.

This closed the plaintiffs' case.

III. The defendant thereupon offered to prove that he addressed to the Secretary of the Treasury and the

Superintendent of the Census Bureau at Washington the two letters, of which copies are on page 27 of the printed transcript, and that he received from the chief clerk of the Department of the Interior, and from the First Comptroller of the Treasury, the letters on pages 28 and 30, printed transcript, and desired to read these letters and replies to the jury, in order to prove payments made to the plaintiffs, and a set-off against them, and claims due him for services rendered the plaintiffs as marshal, aforesaid, which the court declined to permit. The 4th section of the act of March 3, 1797, (1 Stat. 515,) provides that no claim for a credit shall be admitted in suits between the United States and individuals upon trial, but such as shall appear to have been presented to the accounting officers of the Treasury for their examination, and by them disallowed in whole or in part, unless it shall be proved to the satisfaction of the court that the defendant is at the time of trial in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting the claim for such credit at the Treasury Department by absence from the United States or some unavoidable accident.

So far as these letters were offered to prove a credit in behalf of the defendant, they are either Halliburton's own statements in his own behalf, or matters entirely irrelevant and immaterial These papers contained no evidence of payment to the United States disallowed by the accounting offices. United States *vs.* Hawkins, 10

Peters, 125. They are not in the form required by section 2 of the act of March 3, 1797, 1 Stat., 512.

Under the 4th section of the act of 1797, cited above, the letter of the defendant addressed to the Superintendent of the Census Bureau, and that received in reply thereto from the chief clerk of the Interior Department, were properly excluded, *first*, because they contained nothing which imported that any claim for a credit in behalf of the defendant had been presented to the *accounting officers of the Treasury* for their examination and by them disallowed; *second*, because they contained nothing going to prove that at the time of the trial the defendant was in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or some unavoidable accident.

And even if it should be conceded that the defendant's letter to the Secretary of the Treasury and the response thereto from the First Comptroller were admissible, under the pleadings, yet as exactly the same information as would have been furnished thereby, relative to the condition of the defendant's account with the Government, (viz. the official statements numbered 12,039 and 13,028, of May 21, 1860, and April 1, 1861,) had already been introduced in evidence by the plaintiff, (see printed record, pp. 15, 18,) the ruling of the court in excluding those letters would be no ground for reversal, since the error could not possibly prejudice

the party against whom it was made. Blackwell *vs.* Patton, 7 Cranch, 478; Deery *vs.* Cray, 5 Wall., 807–8.

IV. The court sustained the demurrer to the third and fifth pleas. The third plea is that of general performance, which, to a declaration containing a special assignment of breaches, is bad on demurrer. This point seems to be abandoned by the plaintiffs in error. Stephen on Pleading, 335, 359, and cases cited; Bradley *vs.* Osterhoudt, 13 Johns., 403.

V. The fifth plea is bad on demurrer. (United States *vs.* Orestes A. Keehler *et al.*, Sup. Ct. of the U. S., December 1, 1869.)

E. R. HOAR,
Attorney General.

W. A. FIELD,
Assistant Attorney General.